

By

Zaffirini Tejeda

S.B. No. 166

A BILL TO BE ENTITLED

AN ACT

relating to a prohibition on the requirement of a polygraph examination of a complainant as a condition of charging a defendant accused of certain criminal offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 15, Code of Criminal Procedure, is amended by adding Article 15.051 to read as follows:

Art. 15.051. POLYGRAPH EXAMINATION OF COMPLAINANT PROHIBITED. (a) A peace officer or attorney representing the state may not require a polygraph examination of a person who charges or seeks to charge in a complaint the commission of an offense under Section 21.11, 22.011, 22.021, or 25.02, Penal Code.

(b) If a peace officer or attorney representing the state requests a polygraph examination of a person who charges or seeks to charge in a complaint the commission of an offense listed in Subsection (a) of this article, the peace officer or attorney must inform the complainant that the examination is not required.

(c) A complaint may not be dismissed solely:

(1) because a complainant did not take a polygraph examination; or

(2) on the basis of the results of a polygraph examination taken by the complainant.

SECTION 2. This Act takes effect September 1, 1991.

SECTION 3. The importance of this legislation and the

1 crowded condition of the calendars in both houses create an
2 emergency and an imperative public necessity that the
3 constitutional rule requiring bills to be read on three several
4 days in each house be suspended, and this rule is hereby suspended.

By: Zaffirini, Lyon, Tejeda S.B. No. 166
(In the Senate - Filed January 16, 1991; January 22, 1991,
read first time and referred to Committee on Criminal Justice;
February 26, 1991, reported adversely, with favorable Committee
Substitute by the following vote: Yeas 6, Nays 0;
February 26, 1991, sent to printer.)

COMMITTEE VOTE

	Yea	Nay	PNV	Absent
Lyon	x			
Brown	x			
Ellis	x			
Harris of Tarrant	x			
Sims	x			
Tejeda	x			

COMMITTEE SUBSTITUTE FOR S.B. No. 166

By: Lyon

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relating to certain polygraph examinations.

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(1) because a complainant did not take a polygraph examination; or

(2) on the basis of the results of a polygraph examination taken by the complainant.

(c) A peace officer or attorney representing the state may not take a polygraph examination of a person who charges or seeks to charge the commission of an offense listed in Subsection (a) of this article unless the officer or attorney provides the information in Subsection (b) of this article to the person and the person signs a statement indicating the person understands the information.

(d) A complaint may not be dismissed solely:

(1) because a complainant did not take a polygraph examination; or

(2) on the basis of the results of a polygraph examination taken by the complainant.

SECTION 2. Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.25 to read as follows:

Art. 2.25. POLYGRAPH EXAMINATION OF PEACE OFFICER. (a) In this article, "peace officer" means a person elected, appointed, or employed by a governmental entity as a peace officer under Article 2.12, Code of Criminal Procedure, or other law.

(b) A peace officer may not be suspended, discharged, or subjected to any other form of employment discrimination because the peace officer refuses to take a polygraph examination.

SECTION 3. This Act takes effect September 1, 1991.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

* * * * *

Austin, Texas
February 26, 1991

Hon. Bob Bullock
President of the Senate

Sir:

We, your Committee on Criminal Justice to which was referred S.B. No. 166, have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do not pass, but that the Committee Substitute adopted in lieu thereof do pass and be printed.

Lyon, Chairman

FAVORABLY AS SUBSTITUTED
SENATE COMMITTEE REPORT ON

SB

SCR

SJR

SR

HB

HCR

HJR

166

By

Zaffirini
(Author/Senate Sponsor)

(date of submission to Senate)

Lt. Governor Bob Bullock
President of the Senate

Sir:

We, your Committee on CRIMINAL JUSTICE, to which was referred the attached measure,
have on Feb. 26, 1991, had the same under consideration and I am instructed to report it
(date of hearing)

back with the recommendation (s) that it:

- ☒ do pass as substituted, and be printed
() the caption remained the same as original measure
() the caption changed with adoption of the substitute

() do pass as substituted, and be ordered not printed

() and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. ☒ yes () no

A revised fiscal note was requested. ☒ yes () no

An actuarial analysis was requested. () yes () no

Considered by subcommittee. () yes () no

The measure was reported from Committee by the following vote:

	YEA	NAY	ABSENT	PNV
BROWN	X			
ELLIS	X			
HARRIS	X			
SIMS	X			
TEJEDA	X			
LYON	X			
TOTAL VOTES	6			

COMMITTEE ACTION

- ☒ S260 Considered in public hearing
S270 Testimony taken
S275 Left as pending business
S250 Consideration postponed
S280 Failed to receive majority affirmative vote

- S245 Tagged
S266 Laid on table subject to call in Committee
S267 Laid on table in Committee
S265 No action taken
S235 Meeting cancelled
S225 Referred to special subcommittee:

Subcommittee Members: _____

COMMITTEE CLERK

CHAIRMAN

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE

February 11, 1991

TO: Honorable Ted Lyon, Chairman
Committee on Criminal Justice
Senate Chamber
Austin, Texas

IN RE: Senate Bill No. 166
By: Zaffirini

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Senate Bill No. 166 (relating to a prohibition on the requirement of a polygraph examination of a complainant as a condition of charging a defendant accused of certain criminal offenses) this office has determined the following:

No significant fiscal implication to the State or units of local government is anticipated.

Source: LBB Staff: JO, JWH, DF, BP, PA

LEGISLATIVE BUDGET BOARD

CRIMINAL JUSTICE POLICY IMPACT STATEMENT

February 11, 1991

To: Honorable Ted Lyon, Chairman
Committee on Criminal Justice

In Re: Senate Bill No. 166
By: Zaffirini

From: Jim Oliver, Director

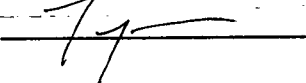
In response to your request for a Criminal Justice Policy Impact Statement on Senate Bill No. 166 (relating to a prohibition on the requirement of a polygraph examination of a complainant as a condition of charging a defendant accused of certain criminal offenses), this office has determined the following:

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

By: Zaffirini, Lyon
Tejeda

S.B. No. 166

~~Substitute the following for S.B. No. 166:~~

By: 

C.S.S.B. No. 166

A BILL TO BE ENTITLED

AN ACT

relating to certain polygraph examinations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 15, Code of Criminal Procedure, is amended by adding Article 15.051 to read as follows:

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(b) If a peace officer or attorney representing the state requests a polygraph examination of a person who charges or seeks to charge in a complaint the commission of an offense listed in Subsection (a) of this article, the peace officer or attorney must inform the complainant that the examination is not required and that a complaint may not be dismissed solely:

(1) because a complainant did not take a polygraph examination; or

(2) on the basis of the results of a polygraph examination taken by the complainant.

(c) A peace officer or attorney representing the state may not take a polygraph examination of a person who charges or seeks to charge the commission of an offense listed in Subsection (a) of

2-26-91
2-28-91

1 this article unless the officer or attorney provides the^{1/2}
2 information in Subsection (b) of this article to the person and the
3 person signs a statement indicating the person understands the
4 information.

5 (d) A complaint may not be dismissed solely:

6 (1) because a complainant did not take a polygraph
7 examination; or

8 (2) on the basis of the results of a polygraph
9 examination taken by the complainant.

10 SECTION 2. ^{Chapter} ~~Article~~ 2, Code of Criminal Procedure, is amended
11 by adding Article 2.25 to read as follows:

12 Art. 2.25. POLYGRAPH EXAMINATION OF PEACE OFFICER. (a) In
13 this article, "peace officer" means a person elected, appointed, or
14 employed by a governmental entity as a peace officer under Article
15 2.12, Code of Criminal Procedure, or other law.

16 (b) A peace officer may not be suspended, discharged, or
17 subjected to any other form of employment discrimination because
18 the peace officer refuses to take a polygraph examination.

19 SECTION 3. This Act takes effect September 1, 1991.

20 SECTION 4. The importance of this legislation and the
21 crowded condition of the calendars in both houses create an
22 emergency and an imperative public necessity that the
23 constitutional rule requiring bills to be read on three several
24 days in each house be suspended, and this rule is hereby suspended.

2. Feb. 28 1991 Engrossed

Latsy Spaw
Engrossing Clerk

I certify that the attached is a true and correct
copy of SB 166, which was
received from the Senate on MAR 4 1991, and
referred to the Committee on Crim. Jurisprudence
Boyd Messersmith
Chief Clerk of the House
S.B. No. 166

By: Zaffirini, Lyon
Tejeda

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1 information in Subsection (b) of this article to the person and the
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3 information.

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8 examination taken by the complainant.

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10 by adding Article 2.25 to read as follows:

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12 this article, "peace officer" means a person elected, appointed, or
13 employed by a governmental entity as a peace officer under Article
14 2.12, Code of Criminal Procedure, or other law.

15 (b) A peace officer may not be suspended, discharged, or
16 subjected to any other form of employment discrimination because
17 the peace officer refuses to take a polygraph examination.

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19 SECTION 4. The importance of this legislation and the
20 crowded condition of the calendars in both houses create an
21 emergency and an imperative public necessity that the
22 constitutional rule requiring bills to be read on three several
23 days in each house be suspended, and this rule is hereby suspended.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE

February 26, 1991

TO: Honorable Ted Lyon, Chairman
Committee on Criminal Justice
Senate Chamber
Austin, Texas

IN RE: Committee Substitute for
Senate Bill No. 166

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Committee Substitute for Senate Bill No. 166 (relating to a prohibition on the requirement of a polygraph examination of a complainant as a condition of charging a defendant accused of certain criminal offenses) this office has determined the following:

No significant fiscal implication to the State or units of local government is anticipated.

CRIMINAL JUSTICE POLICY IMPACT STATEMENT

In response to your request for a Criminal Justice Policy Impact Statement on this bill, this office has determined that no significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies should be anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

Source: LBB Staff: JO, JWH, DF, BP, EC, LC

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

February 11, 1991

**TO: Honorable Ted Lyon, Chairman
Committee on Criminal Justice
Senate Chamber
Austin, Texas**

**IN RE: Senate Bill No. 166
By: Zaffirini**

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Senate Bill No. 166 (relating to a prohibition on the requirement of a polygraph examination of a complainant as a condition of charging a defendant accused of certain criminal offenses) this office has determined the following:

No significant fiscal implication to the State or units of local government is anticipated.

Source: LBB Staff: JO, JWH, DF, BP, PA

HOUSE COMMITTEE REPORT

1st Printing

91 APR -5 PM 8: 22

HOUSE OF REPRESENTATIVES

By Zaffirini, et al.
(Danburg)

S.B. No. 166

Substitute the following for S.B. No. 166:

By Russell

C.S.S.B. No. 166

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(1) because a complainant did not take a polygraph examination; or

(2) on the basis of the results of a polygraph examination taken by the complainant.

(c) A peace officer or attorney representing the state may not take a polygraph examination of a person who charges or seeks to charge the commission of an offense listed in Subsection (a) of this article unless the officer or attorney provides the

1 information in Subsection (b) of this article to the person and the
2 person signs a statement indicating the person understands the
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13 constitutional rule requiring bills to be read on three several
14 days in each house be suspended, and this rule is hereby suspended.

COMMITTEE REPORT

The Honorable Gib Lewis
Speaker of the House of Representatives

4-3-91
(date)

Sir:
We, your COMMITTEE ON CRIMINAL JURISPRUDENCE,
to whom was referred SB 166 have had the same under consideration and beg to report
(measure)

back with the recommendation that it

- () do pass, without amendment.
- () do pass, with amendment(s).
- (X) do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

A fiscal note was requested. (X) yes () no An author's fiscal statement was requested. () yes (X) no

A criminal justice policy impact statement was requested. (X) yes () no

An equalized educational funding impact statement was requested. () yes (X) no

An actuarial analysis was requested. () yes (X) no

A water development policy impact statement was requested. () yes (X) no

A federal funds impact statement was requested. () yes (X) no

() The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

This measure () proposes new law. (X) amends existing law.

House Sponsor of Senate Measure DANBURG

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Russell, Ch.	X			
Ovard, V.C.			X	
Cook				X
de la Garza	X			
Fleuriet	X			
Gallego	X			
Ogden	X			
Place	X			
Tallas				X

Total
6 aye
0 nay
1 present, not voting
2 absent

Shirley Russell
CHAIRMAN
Deborah K. McCall
COMMITTEE COORDINATOR

COMMITTEE ON CRIMINAL JURISPRUDENCE

BILL ANALYSIS

By: Zaffirini

S.B. 166

By: Russell

C.S.S.B. 166

BACKGROUND

Currently, Chapter 15, Code of Criminal Procedure, does not regulate the use of polygraph examinations on victims charging defendants with certain sexual offenses. A few counties condition an investigation or inform the victim that an investigation is conditioned on the results of the polygraph examination and fewer still actually threaten to jail sexual assault complainants if they are caught lying by the exam.

The polygraph does not signal whether a person is being truthful or deceptive. The instrument cannot detect deception by itself. The results of the test depend heavily on the interaction between the examiner and the examinee. The examiner must infer deception or truthfulness by the examinee's physiological responses to various questions. Correct guilty detections range from seventeen (17) to one hundred (100) percent. For greater accuracy, the voluntary cooperation of the individual is recommended.

PURPOSE

This bill prohibits peace officers and state attorneys from requiring submission to a polygraph examination in certain sexual assault offenses.

SECTION-BY-SECTION ANALYSIS

SECTION 1. Amends Chapter 15, Code of Criminal Procedure, by adding Article 15.051, as follows:

Art. 15.051. POLYGRAPH EXAMINATION OF COMPLAINANT PROHIBITED. (a) Prohibits a peace officer or attorney representing the state from requiring a polygraph examination of a person who charges or seeks to charge in a complaint certain offenses, including indecency with a child, sexual assault, aggravated sexual assault, and incest.

(b) Requires a peace officer or attorney representing the state who requests a polygraph exam of a person making or seeking to make such a charge to inform the complainant that the exam is not required and that a complaint may not be dismissed solely for refusal to take a polygraph exam or on the basis of polygraph exam results.

(c) Prohibits a peace officer or attorney representing the state from taking a complainant's polygraph examination unless the officer or attorney provides the information in Subsection (a) of this article to the person and the person signs a statement indicating the person understands the information.

(d) Provides that a complaint may not be dismissed solely for refusal to take a polygraph exam or on the basis of polygraph exam results.

SECTION 2 Effective date: September 1, 1991.

SECTION 3 Emergency clause.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The original bill amended Chapter 2, of the Code of Criminal Procedure by adding Article 2.25 to prohibit a peace officer from being suspended, discharged or subjected to any other form of employment discrimination because the police officer refused to take a polygraph examination. The substitute deletes this section of the bill.

RULEMAKING AUTHORITY

It is the opinion of this committee that this bill does not delegate rulemaking authority to a state officer, agency, department, or institution.

SUMMARY OF COMMITTEE ACTION

Senate Bill 166 was considered in a public hearing on April 3, 1991. At that hearing, the chair laid out a complete committee substitute which was adopted. The motion to report S.B. 166, as substituted, to the full house with the recommendation that it do pass and be printed passed by the following vote: 6 ayes, 0 nays, 1 pnv, and 2 absent.

S.B. 166 is the companion to H.B. 261 which was considered in a public hearing on February 19, 1991, where testimony was taken. H.B. 261, passed the full committee, with a substitute, on March 5, 1991.

5

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE

April 3, 1991

TO: Honorable Sam W. Russell, Chair IN RE: Committee Substitute for
Committee on Criminal Jurisprudence Senate Bill No. 166
House of Representatives
Austin, Texas

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Committee Substitute for Senate Bill No. 166 (relating to certain polygraph examinations) this office has determined the following:

No significant fiscal implication to the State or units of local government is anticipated.

CRIMINAL JUSTICE POLICY IMPACT STATEMENT

In response to your request for a Criminal Justice Policy Impact Statement on this bill, this office has determined that no significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies should be anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

Source: LBB Staff: JO, JWH, DF, BP, EC, LC

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE

February 26, 1991

TO: Honorable Ted Lyon, Chairman
Committee on Criminal Justice
Senate Chamber
Austin, Texas

IN RE: Committee Substitute for
Senate Bill No. 166

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Committee Substitute for Senate Bill No. 166 (relating to a prohibition on the requirement of a polygraph examination of a complainant as a condition of charging a defendant accused of certain criminal offenses) this office has determined the following:

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Source: LBB Staff: JO, JWH, DF, BP, EC, LC

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE

February 11, 1991

TO: Honorable Ted Lyon, Chairman
Committee on Criminal Justice
Senate Chamber
Austin, Texas

IN RE: Senate Bill No. 166
By: Zaffirini

FROM: Jim Oliver, Director

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LEGISLATIVE BUDGET BOARD

CRIMINAL JUSTICE POLICY IMPACT STATEMENT

February 11, 1991

To: Honorable Ted Lyon, Chairman
Committee on Criminal Justice

In Re: Senate Bill No. 166
By: Zaffirini

From: Jim Oliver, Director

In response to your request for a Criminal Justice Policy Impact Statement on Senate Bill No. 166 (relating to a prohibition on the requirement of a polygraph examination of a complainant as a condition of charging a defendant accused of certain criminal offenses), this office has determined the following:

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S.B. No. 166

By Zaffaroni

A BILL TO BE ENTITLED

AN ACT: relating to a prohibition on the requirement of a polygraph examination of a complainant as a condition of charging a defendant accused of certain criminal offenses.

1-16-91

Filed with the Secretary of the Senate

JAN 22 1991

Read and referred to Committee on CRIMINAL JUSTICE

FEB 26 1991

Reported favorably _____

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed

Laid before the Senate

FEB 28 1991

Senate and Constitutional Rules to permit consideration suspended by:

{ unanimous consent
27 yeas, 0 nays

FEB 28 1991

Read second time, _____, and ordered engrossed by:

{ unanimous consent
a viva voce vote
_____ yeas, _____ nays

Caption ordered amended to conform to the body of the bill.

FEB 28 1991

Senate and Constitutional 3 Day Rule suspended by a vote of 27 yeas, 0 nays.

FEB 28 1991

Read third time, _____, and passed by:

{ A viva voce vote
_____ yeas, _____ nays

Betty King

SECRETARY OF THE SENATE

OTHER ACTION:

FEB. 28, 1991

Engrossed

March 4, 1991

Sent to House

Engrossing Clerk

Patsy Gaw

MAR 4 1991

Received from the Senate

MAR 18 1991

Read first time and referred to Committee on CRIMINAL JURISPRUDENCE

4-3-91

Reported favorably Sub G amended, sent to Printer at 1:30 pm

APR 5 1991

APR 5 1991

Printed and Distributed 8:22 pm

APR 22 1991

Sent to Committee on Calendars 3:54 pm

Read Second time (amended): passed to third reading (failed)

by (Non-Record Vote) Record Vote of _____ yeas, _____ nays _____ present not voting.

Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of _____ yeas, _____ nays _____ present not voting.

Read third time (amended): finally passed (failed) by a (Non-Record Vote) Record Vote of

_____ yeas, _____ nays _____ present not voting.

Caption ordered amended to conform to body of bill.

Returned to Senate.

CHIEF CLERK OF THE HOUSE

Returned from House without amendment.

Returned from House with _____ amendments.

Concurred in House amendments by a viva voce vote _____ yeas, _____ nays.

_____ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

_____ Senate conferees instructed.

_____ Senate conferees appointed: _____, Chairman; _____, _____, and _____

_____ House granted Senate request. House conferees appointed: _____, Chairman; _____, _____, _____, _____

_____ Conference Committee Report read and filed with the Secretary of the Senate.

_____ Conference Committee Report adopted on the part of the House by: _____

{ a viva voce vote
_____ yeas, _____ nays

_____ Conference Committee Report adopted on the part of the Senate by: _____

{ a viva voce vote
_____ yeas, _____ nays

OTHER ACTION:

_____ Recommitted to Conference Committee

_____ Conferees discharged.

_____ Conference Committee Report failed of adoption by: _____

{ a viva voce vote
_____ yeas, _____ nays

91 APR -5 PM 8:22

HOUSE OF REPRESENTATIVES

10

70